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In The United States Patent and Trademark Office
Before The Board of Appeals and Interferences

In re application of : Before the board
Barbara Jennings : of appeals
Serial No. 10/693,129 : Appeal 2008-1888
Filed: October 24, 2003
Entitled: PROTECTIVE GARMENT FOR A PATIENT

Request for rehearing

37 C.F.R.41.52 (a)(1)

1. Statement of relief requested

Appellant requests a rehearing on the merits of its appeal concerning whether claims 2, 3, 5, 6, 13, 14, 18 and 21 are anticipated under 35 U.S.C. §102(b) by Jennings (US 6,230,329) (hereinafter Jennings); and whether claim 7 is obviousness under 35 U.S.C. §103(a) of over Jennings (US 6,230,329).

2. Evidence overlooked or misapprehended

The evidence relied upon in support of this request for rehearing on the merits was proffered in Appellant's appeal brief. The Board overlooked or misapprehended the fact that Applicants claim 21 recites "a right tail portion and a left tail portion" of the "garment body" not of the flap in the Jennings '329 reference. The Jennings '329 reference does not describe a "tail portion"; does not use the term "left"; or "right" anywhere in the specification; claims or abstract. Thus the construction of applicant's claim language was undertaken by improperly by writing the terminology of applicant's claim 21 into the disclosure of the Jennings '325 reference. The terms "a right tail portion and a left tail portion" as recited in claim 21 are fully and completely described in the applicants specification and illustrated in the drawings. Attention is respectfully directed to applicants specification and drawings as follows:

"The waist line area 12W corresponds substantially to the waist line area 10W of the garment 10. In some embodiments of the present invention, the garment is comprised of only an upper portion extending from the waist line area 10W to the extended garment portion 24 and in other instances the garment is comprised of only a lower portion extending from the waist line area 10W to the portions 16 and 18. *The portions 16 and 18 in the embodiment shown in Figure 1 take the*

form of a right tail portion and a left tail portion passing through the groin area i.e. crotch of the patient.” Emphasis added (Page 8, lines 3-9)

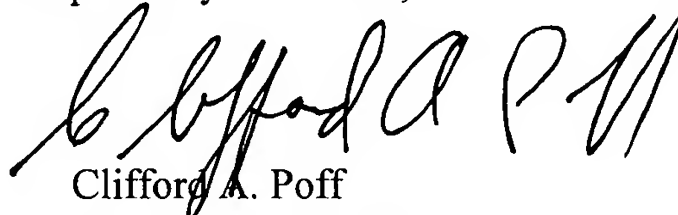
“In Figure 1 the patient is nominally designated as a male patient. Figures 2 and 3 illustrate patterns for a garment, generally designated 20 which is similar to garment 10. The front of a garment formed by pattern 20 is formed as a vest. A garment 10 according to the pattern 20 includes a left tail portion 16 having distal end 17 and a right tail portion 18 having distal end 19. According to the pattern 20 when garment 10 is placed on a male patient 12, left tail portion 16 and right tail portion 18 are drawn through crotch 13 of the male patient 12. Left tail portion 16 is positioned to the left of the genitals of male patient 12 and right tail portion is positioned to the right of the genitals of male patient 12. For garment 10, left tail portion 16 and right tail portion 18 are attached to attachment devices 22. It is presently preferred that attachment devices 22 be loops. Preferably, distal end 17 of left tail portion 16 is drawn through the left loop 22 and attached back on itself by hook and loop fasteners (not shown), of which Velcro is a well known brand name. Likewise, distal end 19 of right tail portion 18 is drawn through the right loop 22 and attached back on itself by hook and loop fasteners (not shown). For garment pattern 20, left tail portion 16 and right tail portion 18 are drawn through fastening devices 154 and fastened back on themselves. It is presently preferred that fastening devices 154 be reinforced openings. Garment pattern 20 also includes bottom edge handholds 152.”

Emphasis added (Page 8, line 21-Page 9, line 15)

Applicant's specification and drawings are complete and sufficient to understand the claim language. The applicant teaches the construction of the "right tail portion 16 and left tail portion 18" and describes and illustrates a pattern 20 for producing the same. The resort to a dictionary has served to define a term outside the applicant's field of art and inconsistent with the applicant's explicit description and illustrations of the claimed structure. Applicant's specification will not allow an interpretation of a single tail. It is respectfully submitted that applicant's claim 21 language must be construed based on the specification from which the claim originated and not in a vacuum.

For the foregoing reasons, the Board should reconsider affirmance of the Examiners Final rejection, and grant a rehearing on the merits.

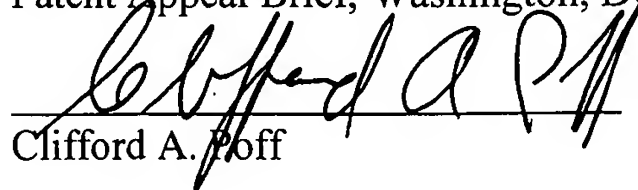
Respectfully submitted,



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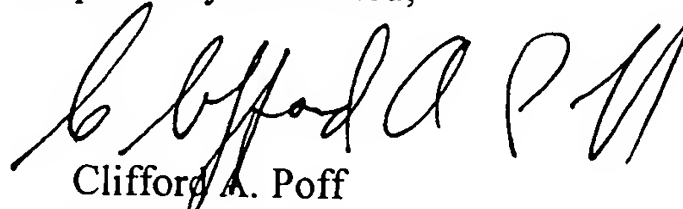
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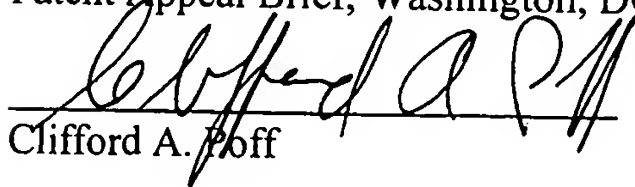
Respectfully submitted,



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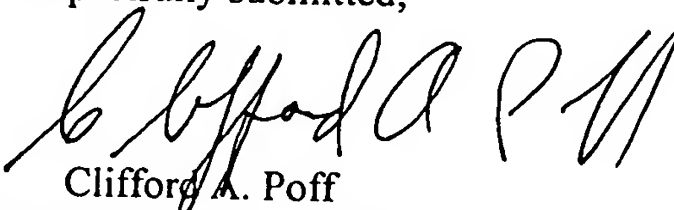
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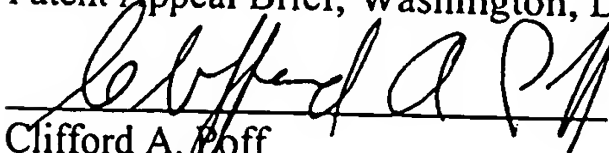
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